

Internal Revenue Service
memorandum

CC:INTL:Br1:RACadenas
CAU-N-104647-98

date: **FEB 26 1998**

to: Director, Office of Tax Administration Advisory Services
CP:IN:TAAS

from: Senior Technical Reviewer, Branch 1
Associate Chief Counsel

CC:INTL:Br1

subject: Requirements for Membership in CIAT

You have advised us that the matter of Cuba's request for membership in the Inter-American Center of Tax Administrators (hereafter "CIAT", the organization's Spanish acronym) will be the subject of a CIAT Executive Council meeting on February 27, 1998. You asked that we review the CIAT organizational documents including articles of incorporation, bylaws, regulations, etc., and summarize the requirements imposed upon a country seeking CIAT membership.

CIAT has two categories of membership. Countries in the "Americas"¹ generally seek to join CIAT as "regular" members, and countries outside the region may seek to join as "Associate Members." As discussed in more detail below, the question of which of the two categories of membership that Cuba seeks is not fully clear from a reading of recent correspondence between CIAT and Cuban tax officials. Thus, we will discuss the requirements of both "regular" and Associate CIAT membership, beginning with a historical background.

I. CIAT (REGULAR) MEMBERSHIP REQUIREMENTS

CIAT was incorporated in Washington D.C., on July 10, 1967, upon the filing of Articles of Incorporation with the Corporation Division, Office of Recorder of Deeds, under the District of Columbia Non-Profit Corporation Act. The CIAT Articles of Incorporation names five individuals as the organization's initial directors, including Sheldon S. Cohen, the Commissioner of the IRS, and the directors of the tax authorities of the governments of Ecuador, Guatemala, Venezuela and Brazil.

Article 6 of the CIAT Articles of Incorporation indicate the following membership requirements:

¹ That is, countries in North, Central and South America and the Caribbean.

The members² of the corporation shall consist of the executive officials of the national tax administrations of the countries participating in the Program of the Alliance for Progress and those of other countries of the Americas who are invited or who request membership in the corporation and are accepted as provided in the bylaws.

TAAS provided our office with a May 1994 booklet named "Statutes and Regulations" which covers modifications of the corporate organizational articles that were made through the 27th General Assembly of CIAT, as well as its bylaws. The May 1994 CIAT booklet seems to be translated from Spanish to English, and we note for purposes of this discussion that the *Articles of Incorporation*, as amended, are referred to in the booklet (and hereafter) as "Statutes" and that CIAT bylaws are referred to as "Regulations."

On the subject of CIAT "regular" membership requirements, we think little has changed in substance since the establishment of CIAT in 1967. Article 1 of the CIAT Regulations lists the 27 "regular" members of CIAT, and in its last sentence alludes to those "...[o]ther countries in the area who may join the Center in the future, in accordance with the Statutes."

Article 3 of the CIAT Statutes deals with persons "eligible" for (regular) membership and mentions those countries who joined at the CIAT General Assembly in 1967, and with regard to future members refers to

"...those other countries having become members of the Center after that date as well as officials from States in the American Continent who are invited to become members or who request admittance and whose [sic] is accepted by the General Assembly."

There is little doubt that Cuba would be considered to be a "State in the American Continent." We note that Article 3 of the CIAT Statutes cited above does not refer to the "countries participating in the Program of the Alliance for Progress" which was mentioned in Article 6 of the CIAT Articles of Incorporation dated July 10, 1967, cited earlier.

Today, the U.S. foreign policy initiatives in Latin America known as the "Alliance for Progress" are primarily viewed from a historical perspective, and participation in the Alliance for Progress is not considered as a requirement for CIAT (regular) membership.

² The term "member" when used in CIAT articles and bylaws denotes "regular" membership, in absence of explicit reference to another status (e.g. Associate Membership).

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TAAS provided our office with a copy of a memorandum dated April 2, 1971, from the IRS Director, Foreign Tax Assistance Staff to the State Department, regarding the possibility of Chile's recommending Cuba for CIAT membership at the 1971 CIAT Fifth General Assembly held in Brazil. Thus, the question we are analyzing today was previously considered by the IRS, prior to the Fifth CIAT General Assembly in 1971. The April 2, 1971, IRS memorandum concludes as follows:

Article 3 of the CIAT Statutes...does not bar Cuba as a member of CIAT. The only justification in CIAT's lack of attention to Cuba rests on the Preamble to the Statutes. The First and Fourth paragraphs cast CIAT within the conceptual framework of the Alliance for Progress. However, agreement to the Charter of Punta del Este is not an explicit statutory condition to CIAT membership. We believe an issue on Cuba's membership could be debated on its merits.

Compounding the issue is prior publicity to the effect that CIAT is a voluntary organization, nonpolitical in its objectives.

Today, we reach the same conclusion determined in 1971, that there are no provisions in the Statutes or Regulations that bar Cuba's eligibility to join CIAT as a regular member.

However, CIAT membership is not granted "for the asking." ~~Under Article 5 of the CIAT Statutes, the subject of a new~~ country's membership would appear to be determined under the general procedures applicable to the approval of Resolutions of the General Assembly, which requires approval by a "simple majority" of the (regular) members. Article 5 also gives all (regular) members the "right to speak" and "vote" on matters coming before the General Assembly, so that the merits of the suitability of a prospective member may be raised before the General Assembly vote on admission.

To sum up, geography - being part of the "American Continent" - seems to be the principal qualification for a country's eligibility as a "regular" CIAT member. Upon request, the admission to membership of such a country should be granted upon the approval of a majority vote of the CIAT General Assembly.

II. CIAT ASSOCIATE MEMBERSHIP REQUIREMENTS

Associate membership in CIAT is separate and distinct from regular membership. Article 3 of the CIAT Statutes gives Associate Members the right to participate in CIAT activities and the "right to speak" but not the right to "vote" on matters

coming before the General Assembly. Article 5 of the CIAT Statutes requires a "two-thirds" majority vote for approval of a country as an Associate Member.

The formal requirements for Associate Membership in CIAT are set forth in a document entitled "Criteria and Procedures for Accepting the Incorporation of Associate Members", that was approved at CIAT's 27th General Assembly in Chile on April 20, 1993. We paraphrase the requirements applicable to Associate Members, that are set forth in full in the May 1994 CIAT booklet entitled "Statutes and Regulations", Part I, at page 13:

- A. Non-American countries may request incorporation to CIAT as Associate Members. [Emphasis added].
 - B. A country wishing to join must demonstrate an active interest in CIAT activities and possess a technical background that would benefit CIAT.
 - C. A country wishing to join must make arrangement with the CIAT Executive Council regarding payment of dues.
 - D. No references are to be made with regard to diplomatic relations between the Member States.
 - E. A two-thirds majority vote of the Assembly is required for approval of a country as an Associate Member.
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- F. The admission of an Associate Member should not imply the withdrawal of another Member country from CIAT.

Part II sections A-G set forth the formal application procedures for CIAT Associate Membership, which includes the requirement that the prospective member country submit, through the CIAT Executive Secretariat, a written request for incorporation as Associate Member, including statements that it will abide by CIAT bylaws, an agreement that it will pay dues and participate in CIAT activities, etc. The CIAT Executive Council is required to inform the applicant for Associate Membership regarding the amount and form of payment of the annual CIAT membership dues.

III.

DISCUSSION AND ANALYSIS

We have reviewed various items of correspondence sent to the CIAT officials Messrs. Silvani and Cosulich by the Cuban Tax Administration Office (ONAT), and we note that Cuba has indicated that it wishes to join CIAT as an "Associate Member", as opposed to a regular member (see letter dated January 8, 1998, to Mr. Silvani).

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Although there do not appear to exist substantive grounds to challenge Cuba's eligibility as a CIAT "regular" member based on CIAT statutes or regulations as discussed above, we believe that Cuba's attempt to join as an "Associate member" would be contrary to the very first provision of these criteria,--- Paragraph 1A, which indicates the clear requirement that "Associate Membership" may be accorded upon request and consideration by CIAT for any "non-American country." Cuba is not a "non-American country."

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CONCLUSION

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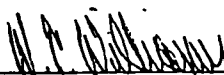
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Please call attorney Ricardo A. Cadenas or me at
(202) 874-1490 if you have any questions, or wish to discuss
this matter.



W. Edward Williams